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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,231	08/01/2001	Rick Meritt	124571-1000	5303

7590 09/24/2004

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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/920,231

Applicant(s)

MERITT, RICK

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,6-8,22-30 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6-8,22-30,34-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1,6-8,23,24,30,34-36** rejected under 35 U.S.C. 103(a) as being unpatentable over US 5740757 (herein 757) in view of US 2886002 (herein 002) and US 2619252 (herein 252).

For claims 1 & 30, 757 teaches an animal feeder comprising a feed hopper 16 having a filling end and a feeding end, the filling end (at ref. 100) has a cover 100 having an access door opening; a protective cage 118; and at least three legs 28. However, 757 is silent about an upwardly extending lip; a lid; an edge member; and a skid assembly.

002 teaches a livestock feeder comprising a lid 76 or 77; an upwardly extending lip 74 or 75 placed around at least a portion of the perimeter of the access door opening 73 and a skid assembly 14 permanently attached to the distal ends of the legs 30. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a lid, an upwardly extending lip placed around at least a portion of the perimeter of the access door opening, and a skid assembly permanently attached to the distal ends of the legs as taught by 002 in the feeder of 757 so as to provide closure

to the filling end of the hopper and to allow the user to move the feeder from one location to another by using the skid assembly.

252 teaches a storage tank 4 with a lid 7 to cover an opening 6 in the tank 4. The lid 7 having supports 8 which create gaps around the lid when placed on the opening. The supports 8 allow for ventilation (col. 2, lines 20-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the lid system with supports as taught by 252 in the feeder of 757 in order to allow ventilation to the interior of the hopper. In addition, it would have been an obvious substitution of functional equivalent to substitute the lid with supports system of 757 as modified by 252 with an edge member joined to the edge of the lid to extend around at least a portion of the lip when the lid is in its closed position, the edge member having a gap formed therein so that the lip extends above the cap when the lid is in its closed position, since both lid with supports/edge member systems would perform to allow ventilation to the interior of the hopper/tank.

For claims 6 & 34, 757 as modified by 002 & 252 teaches the edge member 8 (of 252) is configured to support the lid above the lip in spaced apart relationship when the lid is in closed position. However, 757 as modified by 002 & 252 is silent about plate steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the hopper of 757 as modified by 002 & 252 from plate steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claims 7 & 35, it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the skid assembly of 757 as modified by 002 & 252 to a vehicle such as a tractor, since it is notorious well known that tractor hauls feeder or hopper to various location.

For claims 8 & 36, 757 as modified by 002 & 252 (emphasis on 757) discloses the feed is distributed by gravity from the feeding end 84.

For claim 23, 757 as modified by 002 & 252 (emphasis on 757) discloses the cage 118 encloses the feeding end (see fig. 1).

For claim 24, 757 as modified by 002 & 252 (emphasis on 757) discloses the feeder is welded together to provide a single, unitary structure (col. 4, lines 25-30).

3. **Claims 22,25-28** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5740757 (herein 757) in view of US 2886002 (herein 002) and US 5339996 (herein 996).

For claim 22, 757 as modified by 002 teaches a feeder as explained above. Also, 757 as modified by 002 (emphasis on 757) further teaches a ladder (col. 6, lines 49-52). However, 757 as modified by 002 is silent regarding a platform.

996 teaches a platform 43 attached to a hopper 3 to allow a user to stand for filling the hopper. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach a platform as taught by 996 on the feeder of 757 as modified by 002 in order to allow a user a place to stand on when filling the hopper.

For claim 25, see claim 24 explanation above.

For claim 26, see claim 6 explanation above.

For claim 27, see claim 7 explanation above.

For claim 28, see claim 8 explanation above.

4. **Claim 29** is rejected under 35 U.S.C. 103(a) as being unpatentable over 757 as modified by 002 & 996 as applied to claim 22 above, and further in view of 252 (as above). See explanation above for claim 1, emphasis on 252 for the edge member or supports 8 teaching.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1,6-8,22-30,34-36 have been considered but are moot in view of the new ground(s) of rejection. However, certain arguments will be addressed herein.

**Applicant argued that "In addition, as is very well known, references may not be combined under 35 U.S.C. 103 unless the prior art teaches some reason or motivation for making the combination. The Examiner is reminded that such motivation must come from within the references themselves, not from Applicant's claims. The references cited by the Examiner vary in complexity and application, but also are unrelated to and have no need of one another. More importantly, the references themselves do not provide for the suggested combinations, and one of skill in the art would not be motivated to make the proposed combinations."**

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

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any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation are as stated above in the rejection. For example, 757 teaches a feeder with the features as described above but lacks an upwardly extending lip, an edge member, and a skid assembly. 252 teaches edge member for lid to provide ventilation to the tank. Therefore, the motivation to combine 757 in view of 252 is for ventilation. 002 teaches a feeder having a lid and upwardly extending lip and skid assembly. Therefore, the motivation to combine 757 in view of 002 is to provide the feeder of 757 with a lid and lip assembly for closing an opening in the hopper, and a skid assembly to move the hopper from one location to another. 996 teaches a silo system having a hopper and a platform on the hopper for a user to stand on the platform to fill the hopper. Therefore, the

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motivation to combine 757 in view of 996 is to provide a user with a platform for filling the hopper. So as demonstrated, each and every secondary references, i.e. 002,252 & 996, provide the main reference 757 with a motivation to combine.

The references are not unrelated for they all deal with a container with lid or closure assembly for holding whatever intended. A lid provided on a container with hopper or with a fill opening is nothing new in the art. Also a lid with ventilation option is nothing new in the art. The complexity of the device of 757 does not matter as long as it has the limitation or features as claimed. Yes the device of 757 may have more features such as electronic device, but it still teaches the features as claimed, alone or in combination with other references. By putting a skid assembly, a lid with edge member for ventilation and a platform do not change 757's invention in a way that prevent the device of 757 from being operable. These features are nothing new in the art for they notoriously exist in the art to close an opening and provide ventilation and to move a device from one location to another location.

**Applicant argued that “generator, feed dispensing motors, remote transponders, etc. Considering this complexity, the device is clearly not meant to be placed in wooded areas for long periods of time, continually being exposed to the elements which might damage, or make inoperable, the components. Furthermore, there would be no motivation for a breathable lid to allow the contents to be ventilated and to protect the contents from rain and other elements, as this device would not be exposed to such conditions for long periods of time which would motivate one to make such a modification.”**



To say that 757's feeder is clearly not meant to be placed in wooded area for long periods of time is a mere allegation for the sake of argument without any proof of evidence that the device will not operate or be damaged. The chance of 757's device operating in a wooded area is as good as the chance of Applicant's device being in the wooded area. Anything that is continually being exposed to harm will sooner or later result in damage and not just 757's device. Note that 757 already teaches some sort of lid device 100 and is not meant to be open to the environment so that rain can enter the interior of the hopper to ruin the feed therein. See above for explanation to combine 757 with other secondary references.

**Applicant argued that "Regarding the Dubbert and Hoffman references, these references are not suitable for feeding animals, and as such, would not provide the requisite motivation for making a combination. As the Examiner is aware, the references are directed to a silo for storing concrete (Dubbert and a storage tank for petroleum products Hoffman. One of skill in the animal feeder art would not be motivated to look to references dealing with concrete silos and storage tanks for petroleum products to make the suggested modification. As stated above, the motivation must come from within the references themselves, not from hindsight after first viewing Applicant's claims."**

Dubbert (996) and Hoffman (252) are analogous art for they both teach a container with lid assembly to hold something, whether liquid or solid, in the interior of the container, which is the same container art as 757. The Examiner did not rely on Dubbert and Hoffman for their teaching of concrete storage or petroleum storage. The

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Examiner is merely relying on these two references for their teachings of already notoriously well known elements used with storage container and they are lids with ventilation system and a platform for a user to stand on for filling the container. Besides, a silo for storing concrete or a storage tank for petroleum does not necessary have to be used for storing concrete or petroleum because this is functional language. A silo or storage tank can function to store other things besides concrete or petroleum, depending on the user's intended use of the container.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-

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0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen  
Primary Examiner, GAU 3643  
September 20, 2004